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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 UNITED STATES OF AMERICA,) CV 14-2484-RSWL-PLAx
13 ex rel. TRAVIS KIRO)
14 Plaintiff,) **ORDER re: Relator's**
15 v.) **Motion in Limine 1-7**
16) **[95]; Defendant's Motion**
17 JIAHERB, INC.,) **in Limine 1-9 [98]**
18 Defendant.)
19)
20)

21 Currently before the Court is Relator Travis Kiro's
22 ("Relator") Motion in Limine ("MIL") 1-7 [95]; and
23 Defendant Jiaherb, Inc.'s ("Defendant") MIL 1-9 [98].
24 Having reviewed all papers submitted pertaining to the
25 Motions, the Court **NOW FINDS AND RULES AS FOLLOWS:** the
26 Court **GRANTS** Relator's MIL #1; **GRANTS** Relator's MIL #2;
27 **DENIES** Relator's MIL #3; **GRANTS** Relator's MIL #4;
28 **DENIES** Relator's MIL #5; **DENIES** Relator's MIL #6;

1 **GRANTS** Relator's MIL #7; **GRANTS** Defendant's MIL #1;
2 **GRANTS** Defendant's MIL #2; **GRANTS** Defendant's MIL #3;
3 **DENIES** Defendant's MIL #4; **GRANTS** Defendant's MIL #5;
4 **GRANTS** Defendant's MIL #6; **GRANTS** Defendant's MIL #7;
5 **DENIES** Defendant's MIL #8; and **GRANTS** Defendant's MIL
6 #9.

7 I. BACKGROUND

8 This case arises out of a *qui tam* action brought by
9 Relator on behalf of himself in the name of the United
10 States Government ("the Government") for violations of
11 the False Claims Act, 31 U.S.C. § 3729 *et seq.* ("FCA").
12 Compl., ECF No. 1. The Government declined to
13 intervene [22]. Currently before the Court are
14 Relator's and Defendant's MIL for the forthcoming trial
15 currently set for July 9, 2019. Relator filed seven
16 MIL seeking the Court to:

- 17
- 18 MIL #1) Preclude Defendant from referring to or
19 advising the jury about penalties under
the FCA
 - 20 MIL #2) Exclude all reference to the recovery of
21 attorneys' fees and expenses under the FCA
 - 22 MIL #3) Exclude evidence regarding any purported
"Government knowledge" defense
 - 23 MIL #4) Not permit Defendant to argue or introduce
24 evidence that the Government has not
intervened
 - 25 MIL #5) Preclude Defendant from asserting
26 equitable affirmative defenses
 - 27 MIL #6) Preclude Defendant from introducing
28 prejudicial and irrelevant evidence about
Relator

1 MIL #7) Preclude Defendant from introducing self-
2 serving evidence about its or its
employees' charitable activities

3
4 Defendant filed nine MIL seeking the Court to:

5 MIL #1) Not qualify Relator Travis Kiro as an
6 expert witness

7 MIL #2) Exclude proposed expert testimony from
8 Relator Travis Kiro regarding the price of
9 imports, the processes and composition of
imports, proper duties owed, and customs
procedures

10 MIL #3) Exclude Relator Travis Kiro's proposed
11 expert testimony

12 MIL #4) Exclude character evidence or testimony
13 regarding alleged prior acts unrelated to
the payment of customs duties

14 MIL #5) Limit evidence and testimony to exclude
15 any continued, unnecessary, harmful
interference with Defendant's business
relationships

16 MIL #6) Exclude any evidence or testimony involving
17 an alleged scheme was more likely because
Defendant's parent company is located in
18 China

19 MIL #7) Limit evidence and testimony to the issues
raised by the Complaint

20 MIL #8) Require properly identified trial exhibits
21 and exclude Relator's proposed exhibits to
the extent they contain irrelevant,
22 immaterial and inadmissible evidence

23 MIL #9) Exclude evidence concerning Defendant's
finances

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II. DISCUSSION

A. Relator's MIL

1. Relator's MIL #1 is GRANTED

In Relator's MIL #1, Relator requests that the Court preclude the introduction of any evidence or argument to the jury regarding the FCA's mandatory civil penalties. The FCA provides that any person who violates the Act "is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 . . . plus 3 times the amount of damages which the Government sustains because of the act of that person." 31 U.S.C. § 3729(a)(1). Relator is correct that the role of the jury in this case is to determine whether Defendant violated the FCA, and if so, the number of violations. The imposition of penalties are reserved to the Court as a matter of law. See, e.g., Cook County, Ill. v. United States ex rel. Chandler, 123 S. Ct. 1239, 1247 (2003) (citing 31 U.S.C. § 3729(a)) ("But under the FCA, . . . if [the jury] finds liability, its instruction is to return a verdict for actual damages, for which the court alone then determines any multiplier, just as the court alone sets any separate penalty."); Brooks v. Cook, 938 F.2d 1048, 1052 (9th Cir. 1991) ("The majority rule is that it is error for a court to instruct a jury that it will subsequently treble any damages the jury awards."). Moreover, permitting the jury to hear evidence regarding statutory treble damages and civil penalties

1 is prejudicial to Defendant and would risk the jury
2 imposing monetary relief beyond actual damages, or on
3 the other hand, lowering actual damages in light of the
4 possibility of added penalties. As such, the Court
5 **GRANTS** Relator's MIL #1.

6 2. Relator's MIL #2 is GRANTED

7 Relator's MIL #2 similarly seeks to exclude all
8 reference to the recovery of attorneys' fees and
9 expenses under the FCA. The award of attorneys' fees
10 is a matter of law for the Court, and not the jury to
11 decide. See Brooks, 938 F.2d at 1051 ("The jury's role
12 is to determine liability and the amount of damages.
13 These determinations are distinct from the awarding of
14 fees."); see also Redwood Christian Schools v. Cnty. of
15 Alameda, No. C-01-4282 SC, 2007 WL 214317, at *2 (N.D.
16 Cal. Jan. 26, 2007) (granting motion in limine to
17 exclude evidence of availability of attorneys fees,
18 stating "[such] evidence is irrelevant and . . .
19 unfairly prejudicial"). Defendant does not oppose this
20 Motion, and for the same reasons discussed as to
21 Relator's MIL #1, the Court **GRANTS** Relator's MIL #2.

22 3. Relator's MIL #3 is DENIED

23 Relator's MIL #3 requests that the Court exclude
24 evidence regarding any purported "government knowledge"
25 defense at trial because it fails as a matter of law
26 and fact. Defendant opposes this Motion to the extent
27 that such evidence relates to the question of scienter.
28 One of the elements required to prove a violation of

1 the FCA requires that the defendant "knowingly"
2 submitted a "false or fraudulent" claim. 31 U.S.C. §
3 3729. The FCA defines "knowingly" to mean that a
4 "defendant knew a claim for payment was false, or that
5 it acted with reckless disregard or deliberate
6 indifference as to the truth or falsity of the claim."
7 United States ex rel. Anita Silingo v. WellPoint, Inc.,
8 904 F.3d 667, 680 (9th Cir. 2018).

9 "The requisite intent is the knowing presentation
10 of what is known to be false. That the relevant
11 government officials know of the falsity is not in
12 itself a defense." United States ex rel. Hagood v.
13 Sonoma Cnty. Water Agency, 929 F.2d 1416, 1421 (9th
14 Cir. 1991). That said, "the government's knowledge of
15 the facts underlying an allegedly false record or
16 statement can negate the scienter required for an FCA
17 violation." United States ex rel. Becker v.
18 Westinghouse Savannah River Co., 305 F.3d 284, 289 (4th
19 Cir. 2002); accord United States ex rel. Burlbaw v.
20 Orenduff, 548 F.3d 931, 951 (10th Cir. 2008) ("The
21 'government knowledge inference' helps distinguish, in
22 FCA cases, between the submission of a false claim and
23 the knowing submission of a false claim—that is,
24 between the presence and absence of scienter.");
25 Hagood, 929 F.2d at 1421 ("[T]he knowledge possessed by
26 officials of the United States may . . . show that the
27 defendant did not submit its claim in deliberate
28 ignorance or reckless disregard of the truth."). Thus,

1 while government knowledge is not in itself a defense,
2 evidence of any government knowledge is relevant to the
3 issue of whether Defendant acted with reckless
4 disregard or deliberate indifference to the truth or
5 falsity of its submissions to CBP. See United States
6 ex. rel. UBI v. IIF Data Solutions, 650 F.3d 445, 452
7 (4th Cir. 2011) (finding evidence of government
8 knowledge "relevant to the issue of [defendant's]
9 intent" in an FCA action). As such, the Court **DENIES**
10 Relator's MIL #3.¹

11 4. Relator's MIL #4 is GRANTED

12 Relator's MIL #4 seeks that the Court preclude any
13 argument or evidence that the Government has not
14 intervened in this Action. Indeed, such evidence is
15 irrelevant and would be highly prejudicial in that it
16 could allow the jury to draw the inference that
17 Relator's claim is substantively weak. See, e.g.,
18 United States ex rel. Ubl v. IIF Data Sols., 650 F.3d
19 445, 457 (4th Cir. 2011) ("The government's decision
20 not to intervene in an FCA action does not mean that
21 the government believes the claims are without merit .
22 . . and the government's decision not to intervene
23 therefore is not relevant in an FCA action brought by a
24

25 ¹ Relator goes on to argue that even if the government
26 knowledge issue is relevant to scienter, that Defendant cannot
27 prevail on the facts. However, whether Defendant can put forth
28 sufficient evidence of government knowledge to negate scienter is
not an issue to be decided in limine, but rather, an issue for
the jury.

1 private party."); United States ex rel. Feldman v. van
2 Gorp, No. 03 Civ. 8135 (WHP), 2010 WL 2911606, at *2-3
3 (S.D.N.Y. July 8, 2010) (granting motion in limine to
4 exclude evidence of government's decision not to
5 intervene as irrelevant). Defendant does not oppose
6 this Motion, and in light of the above, the Court
7 **GRANTS** Relator's MIL #4.

8 5. Relator's MIL #5 is DENIED

9 Relator's MIL #5 requests that Defendant be
10 precluded from asserting equitable affirmative defenses
11 because as a matter of law, these defenses are
12 unavailable in FCA cases where a relator is seeking to
13 recover on behalf of the United States, rather than
14 himself. Defendant argues that Relator does not
15 specify any such affirmative defense, and only cites
16 one non-FCA case,² to argue generally that Defendant
17 should be stripped of any and all equitable affirmative
18 defenses.

19 Indeed, Relator did not initially specify any such
20 affirmative defense. According to the FPTC Order,
21 which controls, Defendant plans to pursue two
22 affirmative defenses. See FPTC Order at 4. In his
23

24 ² The only authority Relator relies on is a criminal case,
25 United States v. Sahakian, 453 F.3d 905, 909 (7th Cir. 2006),
26 holding that a district court on a motion in limine "may properly
27 deny a defendant the opportunity to introduce evidence supporting
28 an affirmative defense . . . so long as the facts proffered by
the defendant to support the defense are insufficient as a matter
of law to meet the minimum standard as to each of the elements of
that defense."

1 Reply, Relator only took issue with the first
2 affirmative defense, stated as follows:

3 (a) Relator's claims are barred in whole or in
4 part, because acts or omission of other persons
5 or entities, over whom Defendant Jiaherb had no
6 supervision or control and for whose actions and
omissions Defendant Jiaherb has no legal
responsibility, caused and/or contributed to the
alleged claim.

7 Id.

8 Relator argues that this position is legally flawed
9 because Defendant cannot blame others for the false
10 statements it made to CBP about the products it
11 imported. While a defendant "need not be the one who
12 actually submitted the claim forms in order to be
13 liable," a claim cannot survive if it solely alleges
14 false or fraudulent billing . . . with no allegations
15 of [the defendant's] "knowing assistance" or
16 "cooperation". United States v. Mackby, 261 F.3d 821,
17 827 (9th Cir. 2001).

18 Relator anticipates that Defendant will argue under
19 this defense that another entity-either the seller,
20 customs brokers, or whomever else-was *solely*
21 responsible for the false representations to the
22 government. If proven true, this defense could serve
23 to negate the scienter requirement. Thus, Defendant's
24 affirmative defense is not legally flawed in itself.
25 Rather, Relator argues that as applied to the facts,
26 Defendant cannot succeed on such a defense. For
27 instance, Relator argues that Defendant cannot blame
28

1 its customs brokers because at all times they acted on
2 behalf of Defendant, and informed Defendant that it was
3 responsible for ensuring all information provided to
4 CBP was correct. Relator points to his declaration, as
5 well as the direct language of Defendant's agreement
6 with its customs broker, in which Defendant agreed that
7 "it is required to review all documents and
8 declarations prepared and/or filed with the Customs
9 Service." Declaration of Travis ("Kiro Decl.") ¶ 48,
10 ECF No. 67-8; Rel.'s Stmt. Uncontroverted Fact & L. ¶
11 54, Ex. D, ECF No. 67-3.

12 While such evidence could tend to show that any
13 submissions—at least by customs brokers—should have
14 been reviewed by Defendant, and in turn, Defendant
15 could have had the requisite knowledge of any false
16 claims, it is not the position of the Court, *in limine*,
17 to weigh the factual evidence of an affirmative
18 defense. See, e.g., C & E Servs., Inc. v. Ashland
19 Inc., 539 F. Supp. 2d 316, 323 (D.D.C. 2008)
20 ("[Defendant's] attempt to use a motion *in limine* to
21 preclude claims that they argue lack evidentiary
22 support must fail."). Moreover, the Court is unaware
23 of what evidence and argument Defendant will actually
24 put forth to support this defense. At this stage,
25 Relator's argument is pure conjecture. Rather, at
26 trial, Relator can present evidence to rebut
27 Defendant's position and argue that Defendant knowingly
28 assisted, or acted with reckless disregard/deliberate

1 ignorance to, the falsity of the claims submitted on
2 Defendant's behalf. Thus, the Court will allow
3 evidence pertaining to this defense and **DENIES**
4 Relator's MIL #5.

5 6. Relator's MIL #6 is DENIED

6 Relator's MIL #6 seeks to preclude Defendant from
7 introducing prejudicial and irrelevant evidence about
8 Relator, including (1) his job performance; (2)
9 Defendant's termination of his employment; (3)
10 allegations that he took Defendant's customer lists or
11 other documents; (4) his sister's business; and (5)
12 other matters. Defendant argues that Relator's job
13 performance and related matters are directly relevant
14 to his background, knowledge, and bias as a testifying
15 trial witness. Specifically, Defendant contends that
16 Relator's "failed performance and resulting
17 termination," "theft of customer lists or other
18 documents," competition through his own company and his
19 "sister's more substantial company," are evidence of
20 Relator's bias, lack of credibility, and motive to harm
21 Defendant's business.

22 In FCA cases, courts generally exclude "distractive
23 detours into irrelevant aspects of Relator's personal
24 life". United States ex rel. Feldman, 2010 WL 2911606,
25 at *5. When a relator has no intention of testifying
26 in trial, his self-serving interest in filing suit is
27 irrelevant, as it does not affect whether a defendant's
28 actions were legal or not. See United States ex rel.

1 Landis v. Tailwind Sports Corp., 292 F. Supp. 3d 211,
2 215 (D.D.C. 2017) (finding it irrelevant whether the
3 relator stands to receive a share of any monetary award
4 in the case when the relator will not be providing
5 testimony in trial). However, when a relator will
6 testify at trial, as here, a defendant is permitted to
7 "raise to the jury any challenges to [the relator's]
8 credibility." Ramey v. Dist. 141, Int'l Assoc. Of
9 Machinists & Aerospace Workers, 378 F.3d 269, 283 (2d
10 Cir. 2004). "[T]he jury, as finder of fact and weigher
11 of credibility, has historically been entitled to
12 assess all evidence which might bear on the accuracy
13 and truth of a witness' testimony." United States v.
14 Abel, 105 S. Ct. 465, 469 (1984). Central to this line
15 of questioning is the "motivation of a witness in
16 testifying, including [his] possible self-interest and
17 any bias or prejudice against the defendant." Henry v.
18 Speckard, 22 F.3d 1209, 1214 (2d Cir. 1994).

19 Seeing as Relator not only intends to testify, but
20 also intends to call himself as an expert witness, the
21 Court finds the above-referenced evidence admissible as
22 evidence of potential bias and for purposes of
23 impeachment. See, e.g., United States ex rel. Miller
24 v. Bill Harbet Int'l Constr., Inc., No. 95-1231 (RCL),
25 2007 WL 851868, at *1 (D.D.C. Mar. 14, 2007) ("[T]he
26 fact that relator has a significant financial interest
27 in this litigation is fair game for cross-examination,
28 as it pertains to relator's potential bias."); Udemba

1 v. Nicoli, 237 F.3d 8, 17 (1st Cir. 2001) ("[B]ias is
2 fertile territory for cross-examination," and because
3 the jury "must assess the credibility of witnesses to
4 determine the accuracy of their testimony . . .
5 information as to bias can be of great assistance in
6 making such determinations."). Accordingly, the Court
7 **DENIES** Relator's MIL #6.³

8 7. Relator's MIL #7 is GRANTED

9 Relator's MIL #7 requests that Defendant be
10 precluded from introducing evidence regarding supposed
11 "good acts," such as charitable contributions or
12 community service performed by Defendant or its
13 employees. The Court agrees and finds that any such
14 evidence of "good acts" is irrelevant to the alleged
15 scheme of whether Defendant knowingly submitted false
16 claims to CBP to receive lower duties. See Niver v.
17 Travelers Indem. Co. Of Illinois, 433 F. Supp. 2d 968,
18 994-95 (N.D. Iowa 2006) (granting motion in limine to
19 preclude evidence of "good acts" as irrelevant).
20 Defendant only opposes this Motion to the extent such
21 evidence is admissible under the provisions of Fed. R.
22 Evid. 608, but provides no further explanation. As
23 Relator points out, Fed. R. Evid. 608 allows reputation
24 or opinion evidence regarding a witness's truthfulness
25

26
27 ³ The Court bases its ruling on the specific facts presented
28 in the MIL. To the extent that evidence at trial of Relator's
character is introduced, the Court's ultimate rulings will depend
on the facts and circumstances as presented at trial.

1 or untruthfulness in certain circumstances. Although
2 there is not any specific evidence of "good acts"
3 before the Court now to consider, it does not foresee
4 that any such evidence would be relevant to a witness's
5 propensity to be truthful. Accordingly, the Court
6 **GRANTS** Relator's MIL #7.

7 **B. Defendant's MIL⁴**

8 1. Defendant's MIL #1 is GRANTED

9 Defendant's MIL #1 requests that Relator be
10 excluded from testifying as an expert because Relator
11 is inexperienced, and does not qualify as an expert
12 under Fed. R. Evid. 702. Relator has designated
13 himself as a non-retained expert pursuant to Fed. R.
14 Civ. P. 26(a)(2)(C).

15 Under Fed. R. Evid. 702, expert testimony is
16 admissible if it will assist a trier of fact to
17 understand the evidence or determine a fact at issue so
18 long as (1) the testimony is based upon sufficient
19 facts or data, (2) the testimony is the product of
20 reliable principles and methods, and (3) the witness
21 had applied the principles and methods reliably to the
22 facts of the case. An expert may be qualified either
23 by "knowledge, skill, experience, training, or
24

25 ⁴ At the outset of Relator's Opposition to Defendant's MIL,
26 Relator contends that Defendant did not file its MIL by the
27 deadline of June 18, 2019, filing them a day late on June 19,
28 2019. See Rel.'s Opp'n at 1, ECF No. 103. However, Relator is
incorrect as the Court was in receipt of Defendant's MIL in the
afternoon of June 18, 2019. See ECF No. 98.

1 education," and the advisory committee notes emphasize
2 that Rule 702 is "broadly phrased and intended to
3 embrace more than a narrow definition of qualified
4 expert." Thomas v. Newton Intern. Enters., 42 F.3d
5 1266, 1270 (9th Cir. 1994). The proponent of an expert
6 bears the burden of establishing the expert's
7 qualification as an expert on the subject of his
8 testimony. United States v. Booth, 669 F.2d 1231, 1239
9 (9th Cir. 1981).

10 Whether Relator can be considered an expert depends
11 on what he purports to be an expert in. Relator claims
12 that he has the expertise to testify about product
13 pricing and valuation; the market value of various
14 products and how values differ; the various names of
15 nutraceutical products and whether various names are
16 synonyms or different products; and the details of
17 Defendant's relabeling scheme. As Defendant points
18 out, Relator's statements are entirely conclusory.
19 Relator does not provide a curriculum vitae or any
20 detail as to his education, exact experience, training
21 within the nutraceutical industry, and how it has
22 qualified him to testify as to each topic. Of the
23 fifteen years Relator claims he has worked in the
24 industry, the only position the Court is aware of is
25 Relator's position as an Account Manager for Defendant
26 for a period of seven months from January through July
27 2012. Kiro Decl. ¶ 10. Defendant argues that
28 Relator's work experience is narrowly limited to

1 perfunctory issues related to marketing and sales, and
2 nothing more. Yet, Relator has not provided detail as
3 to his job duties as an Account Manager. Relator even
4 concedes that there are bounds to his testimony,
5 stating that he will neither testify as to the
6 technical aspects of manufacturing and processing
7 nutraceutical supplements, nor will he testify to
8 statistical analyses or tariff schedules and how
9 products are classified for purposes of determining
10 import duties. Rel.'s Opp'n at 4:1-5.

11 Relator has not met his burden to show how he is
12 qualified as an expert at this juncture. Until Relator
13 can provide the requisite qualifications, the Court
14 **GRANTS** Defendant's MIL #1. Relator may testify as a
15 lay witness to his relevant work experience and
16 personal observations while working for Defendant.

17 2. Defendant's MIL #2 is GRANTED

18 Defendant's MIL #2 similarly seeks to exclude
19 proposed expert testimony from Relator regarding the
20 price of imports, the processes and composition of
21 imports, proper duties owed, and customs procedures,
22 because Defendant argues his testimony is unreliable
23 and irrelevant. For the same reasons discussed as to
24 Defendant's MIL #1, the Court **GRANTS** Defendant's MIL
25 #2.

26 3. Defendant's MIL #3 is GRANTED

27 Defendant's MIL #3 requests that the Court exclude
28 Relator's proposed expert testimony because Defendant

1 contends that a jury is capable of understanding the
2 issues without an expert.

3 The Federal Rules of Evidence permit an expert to
4 provide his opinion if "the expert's scientific,
5 technical, or other specialized knowledge will help the
6 trier of fact to understand the evidence or to
7 determine a fact in issue." Fed. R. Evid. 702(a). "If
8 the matter testified to is within the knowledge of
9 jurors," expert testimony is not appropriate. United
10 States v. Christophe, 833 F.2d 1296, 1299 (9th Cir.
11 1987).

12 Relator argues that lay jurors will not have
13 knowledge of bulk sales of imported nutraceuticals, and
14 for example, will probably never have heard of 5-HTP,
15 resveratrol, astragalus, rhodiola, garcinia cambogia,
16 panax ginseng, and other products Relator will discuss.
17 Relator contends that the jury will also have no
18 knowledge about the relative prices of these various
19 products, and the differing values between powders and
20 extracts of different concentrations. However, the
21 Court has already found that Relator is not qualified
22 to testify as an expert at this juncture, and thus
23 **GRANTS** Defendant's MIL #3 as it only concerns Relator's
24 proposed expert testimony.

25 4. Defendant's MIL #4 is DENIED

26 Defendant's MIL #4 seeks that the Court exclude
27 character evidence or testimony regarding alleged prior
28 acts unrelated to the payment of customs duties.

1 Defendant specifically refers to the deposition
2 testimony of Jennifer Solgonick ("Solgonick"), a former
3 employee of Defendant, in which she made statements
4 regarding Defendant's "unethical" practices. The only
5 specific portion of her deposition Defendant points to
6 is where Solgonick recalled her belief that Defendant
7 may have imported mislabeled ginseng products in order
8 to facilitate a more streamlined import process, but
9 not as part of any scheme to underpay import duties.

10 Defendant further argues that Relator's deposition
11 included a similar reference to efforts to avoid FDA
12 delays, also irrelevant to the issues in dispute.
13 Relator argues that Solgonick's testimony regarding the
14 mislabeling of ginseng is directly relevant to this
15 Action, and the Court agrees. Regardless of what
16 Solgonick believes to be the motivation for any alleged
17 mislabeling, any testimony surrounding mislabeling to
18 CBP by Defendant during the relevant time period is
19 directly relevant to the issues at hand. Moreover,
20 nowhere in the portion of Solgonick's deposition cited
21 does she say that the alleged mislabeling was done to
22 "streamline" the import process. See Solgonick Dep.
23 34:24-36:25, ECF No. 67-6. The extent of Solgonick's
24 knowledge and involvement with Defendant goes to the
25 weight of her testimony, rather than its admissibility.

26 Defendant does not point to any other specific
27 evidence. While the Court finds this particular
28 evidence from Solgonick's deposition relevant, without

1 other evidence of prior acts before the Court, it is
2 unable to determine its relevance at this juncture.
3 That said, any evidence or testimony of prior acts
4 unrelated to the alleged scheme that either party seeks
5 to introduce at trial is irrelevant and thus
6 inadmissible. With this limitation in mind, the Court
7 **DENIES** Defendant's MIL #4.

8 5. Defendant's MIL #5 is GRANTED

9 Defendant's MIL #5 requests that the Court limit
10 evidence and testimony to exclude any continued,
11 unnecessary, or harmful interference with Defendant's
12 business relationships. The nature of this case
13 necessarily involves information regarding Defendant's
14 business practices, but Defendant argues that evidence
15 regarding its customer names and lists should be
16 excluded as both irrelevant and also carrying a risk of
17 harming Defendant's business.

18 Relator argues that Defendant's MIL #5 is too vague
19 and fails to specify evidence, and should be denied on
20 that ground alone, but nonetheless agrees that such
21 evidence should not be admitted. The only specific
22 evidence Defendant points to is Exhibit A to Relator's
23 declaration, in which Relator lists 116 customers by
24 name, who Relator noticed allegedly received relabeled
25 products. See Kiro Decl., Ex. A at 13-15, ECF No. 67-
26 8. This list of names is not material to whether, at
27 the time of importing the products through customs,
28 Defendant fraudulently mislabeled the products. While

1 the fact that Defendant is alleged to have later sold
2 such products to its customers at higher prices is
3 relevant, the names of its customers is not. Moreover,
4 Defendant provides that several of its customers have
5 already received communications regarding this Action,
6 and any further dissemination of customer information
7 could harm Defendant's business. Accordingly, the
8 Court **GRANTS** Defendant's MIL #5 to exclude the list of
9 customer names. To the extent either party seeks to
10 introduce evidence of client lists in a different
11 context at trial, the Court will be better suited then
12 to determine its admissibility.

13 6. Defendant's MIL #6 is GRANTED

14 Defendant's MIL #6 seeks to preclude any evidence
15 or testimony implying an alleged scheme was more likely
16 because Defendant's parent company is located in China
17 as irrelevant, cumulative, and carries a high risk of
18 undue prejudice. Relator opposes to the extent that it
19 should be free to discuss that Defendant's parent
20 company is in China, noting that Defendant's purchases
21 and imports from a parent company in China is relevant
22 information, but agrees to not suggest that a
23 fraudulent scheme is more likely as a result. The
24 Court agrees that Defendant's business with its parent
25 company is relevant in that Defendant imports its
26 products into the United States, but that any further
27 suggestion of wrongdoing based on the parent company's
28 location would be highly prejudicial. With this

1 limitation in mind, the Court **GRANTS** Defendant's MIL
2 #6.

3 7. Defendant's MIL #7 is GRANTED

4 Defendant's MIL #7 seeks to limit any evidence and
5 testimony to the issues raised by the Complaint.
6 Defendant brings this Motion in an effort to ensure
7 that Relator does not make any reference to the "seller
8 relationship theory" he sought to bring in via a
9 proposed amended complaint, which the Court denied.
10 Relator agrees that he cannot recover for claims that
11 are not alleged in the Complaint, but argues that
12 evidence of 7501 Customs forms misrepresenting
13 Defendant's relationship to the seller, its parent
14 company, is probative evidence of Defendant's
15 deliberate ignorance of the truth or falsity of the
16 information it provided to CBP. The Court is not
17 persuaded by Relator's argument. Whether Defendant had
18 the requisite scienter regarding the representations on
19 the 7501 forms concerning its relationship to the
20 seller is irrelevant to the alleged scheme involving
21 the mislabeling of products as laid out in the
22 Complaint and FPTC Order. Any evidence of the "seller
23 relationship" designations on customs forms would only
24 serve to confuse the jury and prejudice Defendant. As
25 such, the Court **GRANTS** Defendant's MIL #7 and limits
26 any evidence and testimony to the issues as presented
27 in the Complaint and FPTC Order.

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1 8. Defendant's MIL #8 is DENIED

2 Defendant's MIL #8 seeks that the Court require
3 properly identified trial exhibits and exclude
4 Relator's proposed exhibits to the extent they contain
5 irrelevant, immaterial and inadmissible evidence.
6 Defendant argues that Relator has identified many
7 "undifferentiated masses of previously produced
8 discovery documents" as a single proposed trial
9 exhibit. Def.'s MIL at 12:16-17. Defendant argues
10 that by submitting an entire box of documents as an
11 exhibit, it is unclear whether all of the contents
12 constitute admissible evidence. Relator responds that
13 Defendant's Motion is too vague to be granted as it
14 fails to specifically identify which portion of
15 Relator's trial exhibits it seeks to exclude. In its
16 Reply, Defendant argues that it could not specify every
17 single portion but that Relator proposes to introduce
18 thousands of pages in his marked Exhibits 44-96, asking
19 the Court to admit boxes of documents in their
20 entirety.

21 The Court agrees with Defendant and finds it
22 problematic that Exhibits 44-51 each consist of
23 Defendant's document production for imports by year,
24 and that Exhibits 52-96 consist of the "States
25 Logistics Document Production," with each exhibit as a
26 different folder within a box. See Joint Exhibit List,
27 ECF No. 89. However without the purported documents
28 before the Court, it is unable to make a determination

1 at this juncture as to their admissibility and declines
2 to make a blanket ruling. That said, the Court expects
3 the parties to work out how to present each exhibit in
4 a manner that abides by the Federal Rules of Evidence
5 and Local Rule 26 prior to trial to not delay the
6 proceedings. As such, the Court **DENIES** Defendant's MIL
7 #8.

8 9. Defendant's MIL #9 is GRANTED

9 Defendant's MIL #9 seeks to preclude evidence
10 concerning Defendant's customer lists, proprietary
11 information, and its finances, because Defendant argues
12 they do not bear on any material issues in dispute.

13 The Court already addressed the customer list issue
14 with regard to Defendant's MIL # 5, and thus will only
15 address the arguments regarding Defendant's finances.
16 Relator argues that evidence related to the volume of
17 Defendant's imports are relevant because the jury will
18 have to decide whether Defendant acted in deliberate
19 ignorance or reckless disregard of the truth or falsity
20 of that information. Defendant argues that admission
21 of such evidence would risk undue prejudice because a
22 perception of Defendant as a large, profitable company,
23 might result in a jury penalizing Defendant for being
24 successful. Indeed, any use of Defendant's financial
25 condition to suggest to the jury that Defendant has
26 deep pockets and should thus bear liability is
27 irrelevant to the narrow issue at hand of whether
28 Defendant knowingly mislabeled its imports to receive

1 lower duties, and would unfairly prejudice Defendant.
2 As such, the Court prohibits Relator from introducing
3 evidence of Defendant's financial condition for this
4 improper purpose.

5 Relator provides an example that Defendant's
6 finances could be relevant to scienter, in that the
7 jury may believe that more care should be taken when
8 such large amounts are being imported—for instance, it
9 might not seem reckless for somebody importing \$100
10 worth of products to review import forms, but it might
11 be for someone importing more than \$263.3 million, as
12 in here. While the financial condition of Defendant
13 overall is inadmissible, the prices of the alleged
14 mislabeled products at issue, the value of the products
15 as imported, and the subsequent profits derived are
16 relevant to the issues at hand. To the extent Relator
17 seeks to introduce evidence for this purpose, the Court
18 will be better suited at that time to determine its
19 admissibility. As such, the Court **GRANTS** Defendant's
20 MIL #9.

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IT IS SO ORDERED.

s/ RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge